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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re R.S.V., a Person Coming Under the
Juvenile Court Law.

R.V. ,

Petitioner,

v.

THE SUPERIOR COURT OF SOLANO
COUNTY,

Respondent;

SOLANO COUNTY DEPARTMENT OF
CHILD WELFARE SERVICES,

Real Party in Interest.

A128421

(Solano County
Super. Ct. No. J38932)

I. INTRODUCTION

R.V. (Father) seeks review by extraordinary writ from a juvenile court order terminating reunification services and setting a hearing pursuant to Welfare and Institutions Code section 366.26¹ to implement a permanent plan for his son, R.S.V. (R.S.). Father contends that R.S. should have been placed in his care at the conclusion of an 18-month review hearing or, alternatively, that he was entitled to additional reunification services pursuant to section 366.22, subdivision (b).

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

The Solano County Health and Social Services Department (the Department) agrees with Father. It contends that the juvenile court order is not supported by substantial evidence and that the court abused its discretion by refusing to order additional services. R.S.'s foster parents, who were deemed de facto parents by the juvenile court, and the attorney appointed to represent R.S. in these proceedings oppose this petition and ask us to affirm the juvenile court order. We deny the petition.

II. STATEMENT OF FACTS

A. *Detention and Custody*

R.S. was detained by the juvenile court shortly after his birth in October 2008. His mother, S.A., had previously lost custody of six children, had no plan for R.S., and left the hospital alone the day after R.S. was born. The Department social worker contacted Father, who promised to meet her at the hospital but did not appear and could not be located. The following day, Father contacted the Department to request custody. He admitted that he had used methamphetamines the previous day. However, he also said that he had contacted a few drug programs and was planning to enter one.

The Department investigation disclosed that Father had previously lost custody of a child after reunification efforts failed. Father had an arrest record dating back to 1988 and his convictions included possession of a controlled substance, possession of drug paraphernalia and petty theft. He was incarcerated for eight months in 1986 for traffic offenses, and for 33 days in 1997 for trespassing and possession of drug paraphernalia. Father reported that he had been on probation in the past but could not recall when or why. He was currently on parole for drug-related offenses.

R.S. was placed in foster care on October 28. In its detention report, the Department identified the adoptive parents of R.S.'s maternal half-sibling as a potential placement for R.S. On November 24, 2008, R.S. was placed in foster care with that family.

B. *Jurisdiction and Disposition*

A jurisdiction order was entered January 8, 2009. The court sustained allegations that R.S. was at substantial risk of serious physical harm or illness in the care of his

mother and his father. The allegations against S.A. were more extensive and were entered in her absence. Father stipulated to the allegation against him which stated that R.S. was at substantial risk because Father “had a history of substance abuse that has interfered with his ability to provide appropriate care, custody, supervision and support for [R.S.’s] half sibling,” and Father admitted that he used methamphetamine as recently as October 27, 2008.

The disposition hearing was held on February 4, 2009. The social worker reported that one of Father’s strengths was his ability to see the negative impact of his drug problems. Father reported that he had started using methamphetamine when he was 23 and that he had participated in treatment programs in the past. He was currently enrolled in a residential drug treatment program that did not allow children. His plan was to complete the program and then obtain housing for himself and R.S. The court adopted the Department’s recommendations and ordered that Father receive reunification services.

The Department delineated the following “Service Objectives” for Father: (1) “Consistently, appropriately and adequately parent your child[. . . (2) Stay free from illegal drugs and show your ability to live free from drug dependence. Comply with all required drug tests. (3) Obtain and maintain a stable and suitable residence for yourself and your child[.]” Father’s responsibilities included successful completion of a parenting class, successful completion of an inpatient substance abuse program, random drug testing, and obtaining suitable housing after completion of the inpatient treatment.

C. *Six-Month Status Review*

The Department filed a status report in anticipation of a six-month review hearing that was scheduled for August 5, 2009.

The Department reported that Father was referred to a parenting class in February 2009, and, as of March 16, Father had reported that he was a regular participant. Beginning in March 2009, Father was allowed two unsupervised visits per week with R.S. The visits went well, and Father appeared to recognize R.S.’s development and to

understand his “cues such as feeding for example.” However, Father’s last visit with R.S. during this reporting period occurred on May 2, 2009.

On May 4, 2009, Father successfully completed his residential treatment program called House of Acts. On May 5, Father notified the Department of his plan to attend a clean and sober living facility in Fairfield and told the social worker he would contact the Department once he arrived at the facility. On May 15, the social worker went to the address that Father had provided. The man who answered the door advised that his home was not a clean and sober living facility and that he did not know Father.

On June 4, Father was arrested for a parole violation and was sent to San Quentin, with a projected release date of August 4, 2009. Father’s parole officer had issued a warrant for Father’s arrest after he failed to attend a scheduled meeting with the program director at the clean and sober transitional living facility.

Father sent the social worker a letter dated June 24, 2009. He explained that, after he completed his residential treatment program and met with his parole officer, he went to his grandmother’s home, where he learned that she had passed away. Father reported that he was devastated by this news. He admitted that he drank alcohol, but denied using illegal drugs. He told the social worker that he still wanted to reunify with R.S.

Meanwhile, R.S. was doing well in his foster home placement. He was bonding with his care givers and his half-brother. The foster parents had expressed a desire to adopt R.S. if Father’s rights were terminated.

The six-month review hearing was held on August 5, 2009. The Department recommended that the court terminate services to Father and set a hearing pursuant to section 366.26. Father appeared and contested the Department’s recommendation and the matter was set for a contested hearing.

The contested six-month review hearing was continued several times and it does not appear that an actual contest was heard. Rather, at a hearing on November 16, 2009, the court approved an agreement between the parties that the Department would offer Father reunification services until the 12-month review hearing.

D. *12-Month Status Review*

The 12-month review hearing was scheduled for January 12, 2010. Because of the continuances relating to the six-month review, the Department's status report covered events since Father's release from San Quentin on August 4, 2009.

After Father's release from prison, he went to the Mission Solano Center and joined the "Rays of Hope" program, a Christian-based clean and sober living facility that provided assistance with employment, housing and a drug-free life.

Father had frequent random drug tests. An August 6, 2009, hair strand test was positive for methamphetamine, but a urine test for that day was negative. Father's other drug tests in August and September were negative. On August 20, the social worker discussed the test results with father, who admitted that, contrary to what he had previously claimed, he did use methamphetamine during his May 2009 relapse.

On September 12, 2009, Father enrolled in a 12-week parenting program which he successfully completed. The facilitator reported that Father was "'a very engaging participant and asked the most questions about parenting than any other participant.'" On October 7, 2009, Father enrolled in an outpatient drug treatment program called Healthy Partnerships. The program involved group and individual sessions three times a week and frequent random drug tests.

On January 4, 2010, Father moved into a furnished two bedroom apartment at the "Bridges to Life Center," a transitional housing facility operated by Mission Solano. Father had a six to nine-month contract with the facility which could be extended for an additional six months if he showed progress toward making a permanent stable transition. Father reported that he was working as a volunteer at Mission Solano and had applied for a job at Goodwill and Pride Industries. He received public assistance and had purchased a truck and insurance.

On January 6, 2010, the Department obtained a status report from Father's counselor at Healthy Partnerships. Father had missed a few sessions, two of which were considered unexcused, and he missed one drug test. Nevertheless, the counselor reported

that Father was doing well, that he had learned healthy recovery tools and that he was open to learning new ways of staying sober.

Father had weekly supervised visits with R.S.. The first few visits after the separation resulting from Father's relapse and incarceration were difficult for R.S., who cried on and off. Father was patient and appropriate and responded positively to suggestions from the social worker. Over time, R.S. became more comfortable around Father and would reach for him at the beginning of a visit. Father missed three visits between August 2009 and January 2010. Father had requested unsupervised overnight visits.

The Department's recommendation for the 12-month review was that the placement continue and that Father be afforded additional services pending an 18-month review hearing. The Department determined that the risk associated with a placement of R.S. with Father was "high." However, Father was actively participating in services and pursuing the objectives of his plan. He had obtained housing and maintained sobriety for five months. The Department opined that, if the Father maintained a steady rate of progress, R.S. could be returned to his care by the end of the next reporting period.

The date for the 12-month review hearing was changed several times. Meanwhile, on January 11, 2010, the foster parents filed a de facto parent request and statement. The foster parents stated that they and their adopted son had developed a strong bond with R.S. and that he was a part of their family. The 12-month review and the de facto parent request were continued to February 4, 2010.

At the February 4 review hearing, the juvenile court granted the foster parents' request for de facto parent status. The court also set a trial date for a combined 12 and 18-month contested review hearing.

E. *18-Month Status Review*

The contested hearing was set for April 8, 2010. On April 1, the Department filed an Addendum Report in which it recommended that R.S. be placed with Father and that family maintenance services be provided. The social worker "acknowledge[d] that the transition for [R.S.] has been quite a difficult adjustment and interruption in attachment

with the current care providers, and [R.S.'s] younger sibling.” However, the Department was confident that continued therapy would assist in building a strong attachment between Father and child.

Since February, Father had been allowed unsupervised visits with R.S. twice a week. Overnight visits commenced March 18. Father reported that R.S. woke up crying during the first overnight visit but slept well through the night after that. The social worker reported that R.S. appeared to have adjusted to the visits and that Father was attentive and knowledgeable about R.S.'s needs. Father had taken R.S. to weekly therapy appointments and medical appointments. They enjoyed outdoor activities like going to the park and also went to the library.

On March 3, 2010, Father graduated early from his substance abuse program at Healthy Partnerships because of budget constraints. His counselor reported that he had done well in the program, all his drug tests were negative, and she was working with him to implement an “after care plan” that would include weekly individual and group sessions at Healthy Partnerships. On March 25, Father met with the social worker and the dependency drug court case manager to make a plan for Father to resume services with Healthy Partnership after R.S. was transitioned into his home and to attend 12-Step meetings in the meantime.

Father continued to live in transitional housing at Bridges to Life. His on-site manager reported that he was in compliance with the detailed case plan for the program which required, among other things, that he attend meetings at Rays of Hope, Bridges to Life and dependency drug court, that he work toward bonding and transitioning with R.S., that he obtain employment and acquire information about obtaining a GED. Father was expected to graduate from the program in April 2010.

Father was employed by Goodwill and was working with his employer to obtain a flex schedule that worked with his visitation schedule during the transition period with R.S. He planned to supplement his income by applying for aid programs like Cal Works and was already receiving food stamps. Father had also located a licensed in-home day care facility.

The foster parents reported concerns that, after the overnight visits commenced, R.S.'s behavior changed and he often woke up crying during the night. Because of these concerns, a development assessment was conducted which showed that R.S. was demonstrating age-appropriate skills in all areas but receptive language development which was slightly below average. At the recommendation of the developmental therapist, R.S. and Father began attending weekly sessions at Child Haven to facilitate reunification.

A permanency planning meeting was held on March 23. The Department determined that the primary goal was to place R.S. with Father and provide maintenance services. The secondary goal and concurrent plan was adoption by the foster parents.

On March 30, the Department completed a reunification reassessment. It concluded that the "risk of future maltreatment to the child was moderate." Notwithstanding Father's long history of substance abuse, he had demonstrated a "pattern of abstinence" for seven months and actively participated in treatment and recovery services. Therefore, the Department recommended that R.S. be placed with Father and that maintenance services be provided.

F. *Contested 12/18-Month Review Hearing*

The contested hearing was held over several days in April 2010, before the Honorable Garry T. Ishikawa.

The Department's first witness was Department Supervisor, Veronica Piper-Jefferson. She testified that in March 2010, she began supervising the social worker responsible for R.S.'s case, Ugquanda Sylvester. Piper-Jefferson admitted that she initially had concerns about the plan to reunify R.S. with Father. However, after several meetings with Ms. Sylvester and reviewing the file again, Piper-Jefferson changed her opinion because "it became evident that [Father] met the goals that were set forth and has demonstrated an ability to meet the child's needs." According to Piper-Jefferson, since early August 2009, Father had committed himself to recovery, participated in programs, and received positive reports. He visited R.S. on a regular basis and the visits were

positive. Also, he was very receptive to support from the Department and accepted feedback from the foster parents.

Piper-Jefferson attended the Department's March 23, 2010, permanency planning meeting, which was also attended by Father and the foster parents. Piper-Jefferson observed that Father was very interested in and receptive of feedback from the foster parents. The foster parents were upset that the Department's primary plan was reunification. They wanted adoption to be the primary plan. Piper-Jefferson expressed concern that the foster parents did not support the planned transition.

Piper-Jefferson testified that the Department had already begun the process of transitioning R.S. to Father's home, and that the two were currently having their first five-day visit. She acknowledged that R.S. had bonded with the foster family but also confirmed that, in her experience, children with the ability to make close attachments could transfer those attachments. She also noted that R.S. had an attachment with Father.

Piper-Jefferson's testimony was supplemented with testimony by social worker, Ugquanda Sylvester, who handled this case for the Department since February 2009, and prepared several of the status reports. Sylvester testified that Father's resources for supporting R.S. included his employment, Cal Works, and food stamps, and that he would also be eligible for subsidized child care and WICK once R.S. was placed in his care.

The Department also presented testimony by several of Father's other service providers including Father's dependency court case manager, Father's case manager at Bridges for Life, and the manager of Father's parenting program. Testimony by these witnesses was further evidence that Father had complied with his case plan.

Father, who was 44 years old at the time of the contested hearing, testified that he began using drugs when he was 15 or 16, and that his drug of choice was methamphetamine. Father testified that, prior to the present case, he participated in three drug treatment programs. In all three cases, he was referred to the program because of criminal drug charges, he graduated from the program, and he relapsed shortly thereafter.

Father also admitted that the reason he was incarcerated in June 2009 was because he violated his parole by using drugs.

Father testified that he believes that his current treatment programs will be successful despite his past failures. In the past, Father had no support system after he was released from inpatient treatment and nobody to help him resist his addiction. This time, Father believed that he does have that support system and that he will be successful. Father testified that he appreciates the care that the foster parents have provided, he knows they love R.S. and he is willing to maintain a relationship with them, notwithstanding that they scrutinize his behavior and believe they are better parents than him.

Both foster parents also testified at the hearing. Foster father testified about the bond he felt with R.S. and his concerns about Father. His primary concerns pertained to R.S.'s diet and Father's failure to follow instructions about what R.S. should and should not eat, especially when he was sick. Foster mother also testified about her bond with R.S. and her perceptions about behavioral changes after overnight visits commenced. Specifically, she complained that R.S. had trouble sleeping through the night and that he behaved more aggressively than in the past.

On April 20, 2010, at the conclusion of the testimony and argument, the matter was submitted pending the filing of post trial briefs. In an order filed April 29, 2010, the juvenile court found that Father made substantial progress on his case plan. However, despite that progress, returning R.S. to his care "creates a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." The court also found that, because Father had already received 18 months of services, it could only extend the service period under exceptional circumstances, or for the best interest of the child. The court concluded that neither of these conditions was satisfied. Therefore, services were terminated and a section 366.26 hearing was set.

III. DISCUSSION

A. *The Finding of Substantial Detriment*

Section 366.22, subdivision (a), states that, at the 18-month review hearing, the juvenile court “shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.”

Here, the juvenile court found that placing R.S. with Father would create a substantial risk of detriment to R.S.’s safety, protection, or physical or emotional well-being. Father and the Department challenge this ruling. We apply the substantial evidence standard of review; we *must* affirm a ruling under section 366.22 if it is supported by substantial evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705 (*Constance K.*))

We find that the lower court’s detriment finding is supported by substantial evidence. The record shows that Father participated in three prior treatment programs, graduated from all and relapsed all three times. The most recent relapse in May 2009 occurred when Father was especially well-supported and was in the process of moving toward reunification with R.S. At that time, Father did not contact any of the people who were available to support him including, counsel, treatment providers or the Department. Instead, he lied about transition housing and relapsed. Father also lied to the social worker about not using drugs during his relapse and he maintained that lie until he was confronted with a positive drug test. Although some of the circumstances may be different this time, we agree with the trial court that there are many similarities as well. Father has not demonstrated that he can remain drug free when he is out of treatment. Therefore, as the lower court found, the chance of relapse remains unacceptably high.

In this court, Father spends significant time summarizing evidence that shows he substantially complied with his case plan. Like Father, the Department focuses primarily on evidence of Father’s case plan compliance. It underscores that, in contrast to many other cases in which lack of compliance is *prima facie* evidence of detriment (§ 366.22,

subd. (a)), in this case Father not only substantially complied, but substantively complied with his case plan.

There is no dispute that Father made substantial progress during the last several months of the reunification period. Indeed, the juvenile court expressly so found. However, participation in services required by a case plan does not guarantee return of the child. Even if the parent has “largely complied with the reunification plan” and some evidence justifies return of the child, the court must look to the totality of the facts, including the parent’s progress, and may find return would be detrimental if the facts so warrant. (*Constance K.*, *supra*, 61 Cal.App.4th at p. 693.) Here, the juvenile court concluded that, despite Father’s substantial compliance with his case plan, the risk of detriment to R.S. was unacceptably high.

Father and the Department argue that the lower court gave too much weight to Father’s drug history. However, we are not persuaded by their efforts to minimize Father’s serious and almost life-long drug problem. Furthermore, we disagree with the Department’s contention that the risk of a future relapse is “speculative.”

Father’s own testimony establishes an undeniable pattern. Father entered treatment only when required to do so as a consequence of a criminal offense. Each time, Father complied with the rules and graduated from the program. Each time, Father relapsed shortly after treatment was completed. The evidence pertaining to Father’s most recent round of treatment does not establish a clear break in that pattern. After serving time for his parole violation, Father has continuously lived in transitional housing operated by Mission Solano. His current apartment at Bridges to Life, is a structured facility that helps a person transition into independent living. He has remained sober several months since he was released from San Quentin, which is a good sign. However, he has been receiving extensive treatment and services from various providers including the Department for this entire period of time. Therefore, at the time the juvenile court had to make a decision in this case, Father was not living independently and had not demonstrated an ability to do so.

Father feels differently this time around and is confident that he will not relapse again. However, these feelings are not concrete evidence. He contends that he now has a network of support. But the record shows that prior treatment plans also afforded a support network. Significantly, when Father graduated from House of Acts in May 2009, he had extensive support from his parole officer, the drug dependency court and the Department. Because of that network, Father did not have to take the next step alone; he had an appointment at a post-treatment clean and sober living facility. Instead of attending that appointment, or seeking assistance from the various service providers at his disposal, Father made his own plans and lied to the Department about those plans.

The Department faults the lower court for failing to acknowledge that, although Father lied during his relapse, he was ultimately “completely honest” with his service providers. First, as a court of review, it is not our role to assess Father’s credibility. Second, the record contains substantial evidence that Father has not been completely honest with the Department on numerous occasions throughout this case. For example, according to the disposition report, Father reported that he had been using drugs since he was 23. However, at the contested review hearing Father admitted that he began using drugs when he was 15 or 16. Furthermore, while Father was incarcerated *after* his relapse, he told the social worker that he relapsed by drinking alcohol but that he did not use drugs. Father maintained that lie until August 20, 2009, when he was faced with the results of a positive drug test. Furthermore, at the contested hearing, Father admitted for the first time (as best we can determine) that the reason his parole was revoked during this dependency case was that he used illegal drugs. It is not clear to us why this fact was not reflected in the status reports, which suggest that Father was incarcerated for failing to report to the transitional housing facility.

The Department intimates that substantial compliance with a case plan *must be* enough to warrant a return of the child when the parent’s history of drug abuse is the reason for the dependency. The Department reasons that “[a]n addict is always in recovery and there is always a risk of a relapse,” and that, in light of Father’s history, the risk of a relapse “would have to be moderate even in the best of circumstances.”

Therefore, if reunification services mean anything, the Department posits, then Father's substantial compliance must necessarily be enough. "Otherwise, there would be no incentive for parents with a drug history to engage in a case plan."

There are several problems with this argument. First, we think it is important to clarify that this case was not filed because Father has a drug "history," but rather because he has a drug problem. Second, we reject the notion that the risk assessment that the juvenile court must perform at the 18-month review can be reduced to a generalized checklist for treating drug addiction. There will be cases, such as the present one, in which the specific facts and circumstances support a finding that, despite a parent's substantial compliance with his case plan, the risk of detriment to the minor remains unacceptably high.

Third, the Department's premise that the risk of detriment associated with child placement in the home of a parent with a drug history would always be "moderate" at best is inconsistent with its own policy as described by Ms. Piper-Jefferson at the contested hearing in this case. According to Piper-Jefferson, "we have a standard called minimum sufficient level of care, which is a basic needs of a child met. We look at the factors that brought the child into care that presented the initial risk of or potential for future abuse or neglect, and we look at the—have those factors have been resolved and mitigated so that the risk level is less than moderate."

Thus, contrary to the Department's argument here, the Department's own policy requires that the risk level associated with a recommended placement be "less than moderate." That policy was not followed in this case. At the six-month review the Department believed that a placement with Father posed a substantial risk of harm to R.S. At the 12-month review, the Department advised that a placement with Father posed a "serious" risk. And, on April 1, 2010, shortly before the contested hearing finally occurred, the Department believed that the risk had been reduced from "serious" to "moderate." This evidence that the Department's recommendation to place Rory with Father was inconsistent with its own policy reinforces our conclusion that the juvenile court's detriment finding was supported by substantial evidence.

B. *Refusal to Extend Additional Services*

Father and the Department contend that the juvenile court erred by denying Father additional reunification services. They argue that the evidence warranted extending the reunification period beyond 18 months pursuant to section 366.22, subdivision (b) (section 366.22(b)).

Section 366.22(b) gives the juvenile court discretion to extend the service period beyond the 18-month review if it “determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to the parent . . . who is making significant and consistent progress in a substance abuse treatment program,” and if numerous other conditions are met.²

² Section 366.22(b), states, in relevant part: “If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a substance abuse treatment program, or a parent recently discharged from incarceration or institutionalization and making significant and consistent progress in establishing a safe home for the child's return, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

“(1) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

“(2) That the parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving problems that led to the child’s removal from the home.

“(3) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable, or complete a treatment plan

The language of this statute reflects an important shift at this stage in the proceeding. The court has discretion to extend services beyond the 18-month statutory deadline, but only if it finds that such an extension is in the minor's "best interest." (§ 366.22, subd. (b).)

"The concept of a child's best interest 'is an elusive guideline that belies rigid definition. Its purpose is to maximize a child's opportunity to develop into a stable, well-adjusted adult.' [Citation.]" (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66.) To that end, courts who make this assessment consider the parent's current efforts, fitness and history, the nature and gravity of the problem that led to dependency, and the "'strength of relative bonds between' the dependent child and 'both parent and caretakers.'" (*Id.* at p. 67.) "Of paramount concern in the determination of a child's best interest, after it is determined that reunification is no longer necessarily the objective, is the child's need for stability and continuity. [Citations.]" (*Ibid.*)

In the present case, the juvenile court found that extending additional services to Father was not in the best interest of the child because R.S.'s need for permanence outweighed the speculative benefits of providing additional services to Father. In reaching this conclusion, the court noted that Father had already received more than 18 months of services. The court also found that R.S. was well bonded with his foster parents.

We find substantial evidence in the record to support the juvenile court's findings and conclusion regarding the best interests of the child in this case. R.S. has lived with his half sibling and foster parents since he was a month old. They have given him a stable home and they are the only family he has ever known. Furthermore, they offer permanence because they are, and always have been, ready and willing to adopt R.S. Father, on the other hand, did not go to the hospital after R.S.'s birth, either to visit his child or to keep his appointment with the Department social worker, because he was

postdischarge from incarceration or institutionalization, and to provide for the child's safety, protection, physical and emotional well-being, and special needs. . . ."

taking drugs. He lost contact with R.S. and the Department for a few months during the reunification period because he relapsed, and then he was unable to visit R.S. for a few more months during his incarceration. There is evidence that Father formed a relationship with R.S. after his release from prison, although his visitation record was not perfect. However, despite Father's recent successes, at the conclusion of 18 months of services, Father was still not in a position to offer R.S. a safe or stable home. Father has struggled with drug addition for his entire adult life and lost custody of an older child.

Father contends that extending the reunification period one more time would benefit R.S. because (1) R.S. has a bond with Father; and (2) there is a substantial likelihood that he would reunify with R.S. if the reunification period is extended. Although these factors are relevant, Father has failed to establish that they outweigh the other relevant considerations.³ Furthermore, the court obviously disagreed that Father would likely reunify with R.S. if the service period was extended. On this record, we cannot say that the court was clearly wrong about that.

The Department contends that the juvenile court abused its discretion by treating R.S.'s bond with his foster family as a "determining factor." The only case the Department cites for this proposition, *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495 (*Rita L.*), is inapposite.

The *Rita L.* court reversed a juvenile court order terminating services to Mother at a 12-month review hearing for three reasons. First, the juvenile court's finding that the child could not be safely returned to Mother was not supported by substantial evidence. (*Rita L.*, *supra*, 128 Cal.App.4th at pp. 505-506.) Second, the lower court improperly considered the child's relationship with his foster parents, who had obtained de facto

³ Both Father and the Department intimate that the court's refusal to extend services beyond the 18-month period deprives R.S. of any relationship with Father, while extending the service period would have allowed R.S. to maintain a relationship with both Father and the foster parents. We reject this notion.

The question here is *not* whether maintaining a relationship with Father is in R.S.'s best interest but *only* whether extending the reunification beyond 18 months is in the best interest of this child.

parent status. (*Id.* at p. 507.) And finally, Mother had not been afforded reasonable services. (*Id.* at p. 508.) With regard to the juvenile court's second error, the *Rita L.* court found that the lower court "jumped the gun a bit" by considering the child's "relationship with his de facto parents as *part of* its decision to terminate services and refer the matter to a section 366.26 hearing." (*Id.* at p. 507.)

In the present case, there is no evidence that the juvenile court "jumped the gun." It did not rely on or make any reference to R.S.'s bond with his foster family when it ruled that R.S. could not be safely placed in Father's care at the conclusion of the 18-month hearing. Instead, when it was asked to exercise its discretion to extend services beyond the 18-month period, the court did consider R.S.'s relationship with his de facto family. At that juncture, the court was expressly required to consider the best interests of the child and R.S.'s bond with his foster family was absolutely relevant to that determination.

The Department contends the juvenile court abused its discretion because it based its decision on the allegedly erroneous fact that Father had already received more than 18 months of services. It maintains that Father had not yet received 18 months of services when the contested hearing began.

The record shows that, by the time the juvenile court issued its decision on April 29, 2010, more than 18 months had passed since R.S. was taken into custody and placed in foster care. In any event, the juvenile court's point was that it did not believe that extending the reunification period beyond the 18-month review was in R.S.'s best interest. This belief was based on the court's assessment of all the circumstances of this case and, as explained more fully above, was supported by substantial evidence.

Finally, the Department contends that extraordinary circumstances "appear to have existed during the pendency of this case." It suggests that Father may have been disadvantaged because he was a man, and therefore could not participate in treatment programs that are available to mothers who are allowed to bring their children with them. "Arguably," the Department concludes, these circumstances would have caused a delay

in obtaining services. This argument is based on pure speculation and does not establish any abuse of discretion on behalf of the juvenile court in this case.

IV. DISPOSITION

The petition for extraordinary relief is denied on the merits. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.264(b)(3).) The request of a temporary stay of the section 366.26 hearing is denied.

Haerle, Acting P.J.

We concur:

Lambden, J.

Richman, J.